

Economic Impact Statement/Analysis

Introduction

The purpose is to describe the methodology and reasoning in support of the information provided in the Economic and Fiscal Impact Statement (STD 399, Rev 12/2013).

Statement of the Mandate

The proposed rulemaking is a technical update to California Code of Regulations, Title 23, Waters, Division 1 for the purposes of modernizing design and construction standards the Central Valley Flood Protection Board (Board) requires for project work and encroachments to the flood control system within the California Central Valley. The proposed regulation does not require local entities to undertake a new program or to provide an increased level of service in an existing program.

Background or Introductory Material

Legislation for Basis of the Regulation

For purposes of this rulemaking, the California Water Code (CWC) sections 8534, 8598 (a), 8608, and 8710 authorize the Board to adopt regulations or rules as needed to carry out its legislatively mandated powers and duties relative to operation, maintenance and protection of the flood control system in the California Central Valley.

CWC Section 8534 provides:

“The Board shall enforce on behalf of the State the erection, maintenance and protection of levees, embankments and channel rectification as will, in its judgment, best serve the interests of the State.”

(Added by Stats. 1943, Ch. 369, p. 1896.)

CWC 8571 authorizes the Board to:

“[a]dopt, amend, or repeal rules to promote the convenient, orderly and just conduct of the business of the Board.”

(Added by Stats. 1943, Ch. 369, p. 1896.)

CWC section 8598 (a) provides that the Board may:

“Establish a standard for levee construction.”

(Added by Stats. 1943, Ch. 369, p. 1896.)

CWC Section 8608 provides:

“The Board shall establish and enforce standards for the maintenance and operation of levees, channels, and other flood control works of an authorized project or an adopted plan, including but not limited to standards for encroachment, construction, vegetation and erosion control measures. In adopting such standards, the board shall give full consideration to fish and wildlife, recreation and environmental factors. Any violation of such adopted standards without the permission of the board is a public nuisance, and the board may commence and maintain suit in the name of the people of the state for the prevention or abatement of the nuisance.”

(Added by Stats. 1970, Ch. 804, § 1.)

CWC section 8609 specifies, in part, that the Board may:

“designate floodways throughout the Sacramento and San Joaquin Rivers drainage to control encroachments in, and to preserve the flow regimens of, floodways for the purpose of protecting public improvements, lives, land use values, and improvements created in reliance upon historical flood patterns.”

(Added by Stats. 1986, Ch. 245, § 1. Amended by Stats. 1987, Ch. 56, § 177)

CWC Section 8710 provides:

“Every plan of reclamation, flood control, drainage, improvement, dredging or work, that includes or contemplates the construction, enlargement, revetment or alteration of any levee, embankment, canal or other excavation in the bed of or along or near the banks of the Sacramento or San Joaquin Rivers or any of their tributaries or connected therewith, or upon any land adjacent thereto, or within any of the overflow basins thereof, or upon any land susceptible to overflow therefrom, shall be approved by the board before construction is commenced.”

(Added by Stats. 1943, Ch. 369, p. 1896. Amended by Stats. 1945, Ch. 233, p. 701, § 1.)

Other Pertinent Historical Information

The Board, originally chartered in 1911 as the Reclamation Board, serves as the liaison between the State of California, its residents, property owners, Central Valley agencies, and the United States government. The Board’s mission is “to reduce the risk of catastrophic flooding to people and property within the California Central Valley” while also considering environmental and habitat concerns.

The Board manages 1,600 miles of levees, weirs, and channels, and maintains thousands of flood easements and parcels of Board property throughout the Sacramento and San Joaquin River systems. The Board manages encroachments on the State Plan of Flood Control (SPFC) through comprehensive permitting, enforcement, and inspection programs. The Board issues permits prior to the commencement of work for all encroachments to ensure that they are not injurious to, or interfere with, the successful execution, functioning, or operation of SPFC facilities.

As one of its core functions, the Board issues permits and oversees any alteration to the State-Federal flood control system within its jurisdictional authority. The Board sets standards for the design and construction of flood control facilities and encroachments with permit application

review, approval, issuance, and verification of compliance with California Code of Regulations, Title 23, Division 1.

The Board's existing regulations governing technical standards have not been amended since 1996. The proposed rulemaking is necessary to specify the information required to be submitted to the Board to determine whether proposed work or encroachments are acceptable, to specify acceptable engineering methods for developing that information, and to set engineering standards that are consistent with modern engineering requirements.

Adoption and implementation of this proposed action would establish standards consistent with improvements in engineering standards for proposed work to avoid impacts to the flood carrying capacity of rivers and regulated streams and maintain the integrity of flood control project features. Levees are the most prevalent flood control project feature throughout the Board's jurisdiction and their failure can result in the devastating loss of life, infrastructure, critical habitat, and property. Encroachments to the flood control system have the potential to interfere with operation, maintenance, and flood fighting capabilities along stream channels, levees, and other flood control project features. Updated technical standards are needed to mitigate against such interference and further reduce the risk of detrimental effects of catastrophic flooding.

Cost Impact Analysis

The proposed rulemaking does not impose any new fees or amend any of the Board's existing permitting or inspection fees. It is, therefore, not anticipated to result in any increased direct costs to private persons, businesses, schools or state or local agencies within the Board's current jurisdiction. Rather, the proposed action would establish updated engineering standards that are consistent with modern engineering requirements in place of the existing standards, which are currently over two decades old. Due to the nature of levee construction and other flood control facilities and the critical flood protection purpose they serve, permit applicants seeking to encroach upon the flood control system typically retain a civil engineer to design their proposed projects to meet Board standards. Similarly, most permit applicants also lack the expertise to construct encroachments to design standards required by the Board and, therefore, hire a licensed contractor to construct the project work or encroachment. The proposed rulemaking is not anticipated to have an effect on permit applicants retaining civil engineers or contractors in designing and construction of projects.

While the Board does not anticipate any increased direct costs to any particular permit applicant as a result of the proposed rulemaking, there is the potential for an increase in the number of applicants overall required to obtain a permit from the Board as a result of the proposed rulemaking. Due to the potential in-ground pools and wells have to negatively impact flood control facilities, the proposed rulemaking would increase the set-back distance for in-ground pools and wells from flood control facilities. The increased set-back for pools and wells, depending upon the depth of excavation, will potentially require individuals or businesses to obtain a permit for their respective in-ground pool or well, which under the Board's current regulations may not be required to obtain a permit. These applicants would be subject to the Board's existing permitting and inspection fees. The Board's permitting application fee for swimming pools is \$3,000 and \$1,000 for wells, due at application submittal. Inspection fees are \$500 for both types of encroachments and are due at the time of issuance of the permit.

Above ground pools would not require an encroachment permit from the Board and, thus, would not be subject to the above – referenced permitting and inspection fees.

The cost for an in-ground pool varies depending on the size, depth, materials, location of the build site, and any added enhancements such as lighting, additional water features, or high-end interior finishes. While the final cost for an in-ground pool can easily exceed \$100,000, the average cost for an in-ground pool ranges from \$50,000 - \$100,000.

[<https://californiapools.com/swimming-pool-blog/blog/how-much-does-a-swimming-pool-cost/> (as printed November 13, 2020).] Under this cost range, the permitting and inspection fee would add an additional \$3,500 to the total cost of the project, which represents 3.5 percent on the low end and 7 percent on the high end of the overall project cost for an in-ground swimming pool.

The cost to drill a well can vary significantly depending on the type and material being drilled through (sand, rock, clay), the diameter of the well, and the type of casing and well cap used. The cost to drill a well is typically \$15 - \$30 per foot for the drilling process itself and a complete system can cost \$30 - \$65 a foot for residential system. The average cost for an irrigation or agricultural well is from \$50 - \$100 a foot. Assuming a well depth of 300 feet, the cost for a residential well ranges on average from \$9,000 - \$19,500 and the cost for an irrigation or agricultural well ranges from \$15,000 - \$30,000. [<https://homeguide.com/costs/well-drilling-cost> (as printed November 13, 2020).] Under these cost ranges, the permitting and inspection fee would add an additional \$1,500 to the total cost of the project, which represents anywhere from 5 – 16.5 percent of the overall project cost for a residential, irrigation or agricultural well.

Despite the potential additional project costs for such type of encroachments, the public safety benefits of the proposed rulemaking far outweigh the additional costs to private persons or businesses that may be affected by the proposed action.

Estimated Benefits

It is anticipated that both the public and applicants will benefit from the proposed rulemaking, including increased safety and welfare of California residents, businesses, property and public and private infrastructure. The proposed regulations are necessary to specify the information required to be submitted to the Board to determine whether proposed work or encroachments are acceptable, to specify acceptable engineering methods for developing that information, and to set engineering standards that are consistent with modern engineering requirements. The proposed rulemaking enables the Board to continue carrying out its mission to reduce the risk of catastrophic flooding to people and property within the California Central Valley.

Adoption and implementation of this proposed action will establish standards consistent with improvements in engineering standards for proposed work to avoid impacts to the flood carrying capacity of rivers and regulated streams and maintain the integrity of flood control project features. Levees are the most prevalent flood control project feature throughout the Board's jurisdiction and their failure can result in the devastating loss of life, infrastructure, critical habitat, and property. Likewise, encroachments to the flood control system also have the potential to interfere with operation, maintenance, and flood fighting capabilities along stream channels, levees, and other flood control project features. Updated technical standards are needed to mitigate against such interference and further reduce the risk of detrimental effects of catastrophic flooding. The ability to regulate the design and construction of flood control

projects and encroachments within the adopted plan of flood control is paramount to the Board's statutory mandate.

Consequently, the Board has determined that it is:

1. Unlikely that the proposed rulemaking will eliminate any jobs for permit applicants or consultants relied on by applicants;
2. Unlikely that the proposed rulemaking will create any jobs for permit applicants or consultants;
3. Unlikely that the proposed rulemaking will create any new businesses providing services to permit applicants or consultants;
4. Unlikely that the proposed rulemaking will eliminate any existing businesses;
5. Unlikely that the proposed rulemaking will affect the expansion of businesses currently doing business in the state; and
6. In the public interest for adoption of the proposed rulemaking, which will increase public safety and welfare of California residents, private property, public infrastructure, critical habitat, and property.

Evidence Supporting Finding of No Significant Statewide Adverse Economic Impact Directly Affecting Business

The proposed rulemaking will only be imposed within the geographic area of the Board's jurisdiction in the Central Valley and will not result in a significant adverse economic impact to businesses, including small businesses, statewide as it does not impose any new or amended costs to business statewide. The proposed action revises technical standards that govern the design and construction of flood control facilities and encroachments, which have the ability to impact the flood control works and floodways within the Board's jurisdiction that are unique to the California Central Valley. As such, the proposed action will not adversely affect the ability of California businesses to compete with businesses in other states.

Alternatives Statement

The Board has determined that there is no reasonable alternative considered or that has otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Board's technical regulations require updating in order for the Board to meet its statutorily prescribed mandate to protect, operate and maintain the State's flood control system within the Board's jurisdiction.

Duplication or Conflict with Federal Regulations

There are no comparable regulations in the federal Code of Regulations that govern the technical standards for flood control project construction or encroachments. The Board, however, consulted with the United States Army Corp of Engineers (USACE) regularly and extensively in the development of the proposed rulemaking to ensure consistency with USACE guidance criteria for flood project and encroachment design and construction.